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Anwar bin Ibrahim v Abdul Khalid @ Khalid Jafri bin Bakar Shah & Anor (No 1)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3–23–40 OF 1998
HISHAMUDIN YUNUS J
B 20 JANUARY 2005

Civil Procedure — Case management — Directions made by trial judge during pre-trial case management — Failure to comply with court's direction — Whether judgment to be entered for plaintiff

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Civil Procedure — Judgments and orders — Order made by court — Absence of defendants' counsel without lawful excuse — Lackadaisical attitude in proceedings — Whether judgment to be entered for plaintiff

D The first defendant was the author of a book entitled '50 Reasons Why Anwar Cannot Become Prime Minister'. The second defendant was the publisher of the book. The plaintiff alleged that the contents of the said book were malicious, false and defamatory of the plaintiff. The plaintiff claimed damages, aggravated damages and an injunction to restrain the defendants or their servants from circulating or publishing the book.

E At a case management hearing on 22 November 2004, the court directed: (a)the defendant to serve further and better particulars on the plaintiff by 22December 2004; (b) both parties to be present in court on 20 January 2005 for further case management hearing.

F At the case management hearing of 20 January 2005, counsel for the defendants was absent. The court was informed by the plaintiff's counsel that the defendants did not comply with the court's direction to serve further and better particulars on the plaintiff. As such, the plaintiff's counsel applied for the defendants' defence to be struck out and judgment to be entered for the plaintiff.

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Held, allowing the plaintiff's application:

(1) The defendants' counsel, without lawful excuse, was absent at the case management hearing on 20 January 2005 and had shown a lackadaisical attitude in the proceedings (see para 18).

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(2) The defendants had also failed to comply with the direction of this court to serve further and better particulars on the plaintiff and had not been cooperative with their own counsel. Even the defendants' counsel had difficulty in contacting the defendants (see para 19).

I (3) Taking into account these factors, it would meet the ends of justice if the defence was struck out and judgment given for the plaintiff with costs (see para 22).

[**Bahasa Malaysia summary**

Defendan pertama adalah pengarang buku bertajuk '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM'. Defendan kedua adalah penerbit buku tersebut. Plaintif mendakwa bahawa kandungan buku itu berniat jahat, tidak benar dan berunsur fitnah terhadap plaintif. Plaintif menuntut ganti rugi, ganti rugi teruk dan satu injunksi untuk menghalang defendan-defendan atau pekerja-pekerja mereka daripada mengedarkan atau menerbitkan buku itu.

Semasa pembicaraan pengurusan kes pada 22 November 2004, mahkamah telah mengarahkan: (a) defendan menyerahkan butir lanjut dan jelas kepada plaintif sebelum 22 Disember 2004, dan (b) kedua-dua pihak hadir di mahkamah pada 20 January 2005 untuk pembicaraan pengurusan kes lanjut.

Semasa pembicaraan pengurusan kes pada 20 Januari 2005, peguam bagi defendan-defendan tidak hadir. Mahkamah diberitahu oleh peguam plaintif bahawa defendan-defendan tidak mengikut arahan mahkamah untuk menyerah butir lanjut dan jelas ke atas plaintif. Oleh itu peguam plaintif memohon supaya pembelaan defendan-defendan dibatalkan dan penghakiman dimasukkan bagi pihak plaintif.

Diputuskan, membenarkan permohonan plaintif:

(1) Peguam bagi pihak defendan-defendan tanpa sebab yang sah, tidak hadir untuk pembicaraan pengurusan kes pada 20 Januari 2004 dan telah menujukkan sikap acuh tidak acuh semasa prosiding (lihat perenggan 18).

(2) Defendan-defendan juga gagal mengikut arahan mahkamah untuk menyerah butir lanjut dan jelas kepada plaintif dan tidak bekerjasama dengan peguam sendiri. Peguam defendan-defendan juga mengalami kesukaran dalam menghubungi defendan-defendan (lihat perenggan 19).

(3) Mengambil kira faktor-faktor ini, adalah wajar dan adil sekiranya pembelaan ditolak dan penghakiman dimasukkan bagi pihak plaintif bersama kos (lihat perenggan 22).]

Notes

For cases on order made by court, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3536–3540.

For a case on directions made by trial judge during pre-trial case management, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) para 1364.

Legislation referred to

Rules of the High Court 1980 O 34 r 4, O 34 r 7

Tuan Haji Sulaiman Abdullah (Leela Jesuthasan with him) (Faiz & Co) for the plaintiff. Defendants absent.

Hishamudin Yunus J:

[1] On 20 January 2005, during case management hearing, I ordered that the defence be struck out and gave judgment for the plaintiff with costs. I ordered that damages be assessed before the judge on a date to be fixed.

[2] At the hearing on 20 January, the learned counsel for the defendants was absent. The learned counsel for the plaintiff, Tuan Haji Sulaiman bin Abdullah, who was present, informed the court that a direction issued by the court at the previous hearing of case management on 22 November 2004 pertaining to the serving of further and better particulars on the plaintiff by the defendants had not been complied with by the defendants within the time prescribed. Basing on this fact and also the fact that counsel for the defendants was absent, and citing O 34 r 7 of the Rules of the High Court 1980 ('the RHC'), Tuan Haji Sulaiman applied that the statement of defence of the defendants be struck out and judgment be entered for the plaintiff with costs.

[3] Order 34 r 7 of the RHC provides:

> 7 Failure to comply with judge's direction (O 34 r 7)
>
> If any party to an action fails to comply with any direction given by the judge at any pre-trial conference, such order may be made against the defaulting party by the judge as meets the ends of justice.

[4] At the previous case management hearing on 22 November 2004, the court pursuant to O 34 r 4 of the RHC directed the parties as follows:

(a) the defendant to serve further and better particulars to the plaintiff on or before 22 December 2004; and

(b) both parties to be present again in court on 20 January for further case management hearing, wherein further directions would be given.

[5] Although not recorded in my notes, nevertheless, in keeping with my usual practice, I had on 22 November impressed upon the parties that as the present case is a 'pre-2000' case (meaning a case registered before the year 2000), it has to be ready for trial as soon as possible and that parties are to comply strictly with whatever directions given by the court.

[6] Before explaining my grounds, I shall first set out briefly the background facts of the case.

[7] The plaintiff at the material time as well as at the time of the filing the present suit was the Deputy Prime Minister of Malaysia, Minister of Finance, Member of Parliament, as well as the Deputy President of the political party, UMNO.

[8] The first defendant at the material time was a journalist, freelance writer and an editor-cum-producer of several monthly magazines.

[9] The first defendant is the author of a book entitled '50 Dalil Mengapa Anwar Tidak Boleh Jadi PM' ('50 Reasons Why Anwar Cannot become Prime Minister'). **A**

[10] The second defendant is the wife of the first defendant and is the publisher of the said book.

B

[11] The present suit was filed on 18 June 1998.

[12] The book alleges, among others, that the plaintiff is a homosexual, a corrupt leader, had committed adultery and had an illegitimate child, a puppet of a named foreign country, and a traitor to his country.

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[13] In the present action, the plaintiff, in his statement of claim, alleges that the contents of the said book are malicious, false and defamatory of the plaintiff.

[14] The plaintiff also alleges that the defendants together with the political enemies of the plaintiff within UMNO had conspired to defame the plaintiff (tort of conspiracy to injure). **D**

[15] The plaintiff claims:

(a) damages;

(b) aggravated damages; and

(c) an injunction to restrain the defendants or their servants or agents from circulating or publishing the said book. **E**

[16] The defendants, in their statement of defence, deny that the contents of the book are defamatory. In the alternative, they plead justification, fair comment and qualified privilege. They also deny conspiring with others to defame the plaintiff. **F**

[17] I shall now explain as to why I gave judgment for the plaintiff at the hearing of the case management on 20 January 2005.

[18] First, as has been said earlier, the defendants' counsel, without lawful excuse, was absent at the case management hearing on 20 January 2005. The **G** defendants' counsel has had knowledge of the hearing date of 20 January 2005 because, at the previous hearing of the case management on 22 November 2004, En Shamsul Bahrain (of Ms Skrine), for the defendants, was present, appreciated the fact that this is a 'pre-2000' case and to be given priority, and had agreed (based on his free dates) to the next case management date (20 January 2005). **H** Subsequent to that day (22 November), there had not been any request for an adjournment by the defendants' solicitors; nor had counsel for the defendants made any application to be excused from attending court (for some good reason) on 20 January.

[19] Second, (also as has been said earlier) the defendants had also failed to **I** comply with a direction of this court. During the previous case management hearing on 22 November 2004, on the application of counsel for the plaintiff,

I had directed the counsel for the defendants to serve further and better particulars on the solicitors for the plaintiff on or before 22 December 2004. The solicitors for the defendants had failed to comply with that directive. When the defendants failed to comply within the time frame, as directed, the solicitors for the plaintiff, on 7 January 2005, sent a reminder (see encl 84) to the solicitors for the defendants giving them 72 hours to comply. The solicitors for the defendants vide their letter of 11 January 2005 (see encl 85) responded by informing the solicitors for the plaintiff that they had difficulty in getting in touch with their clients — the defendants. The solicitors for the defendants, by the same letter, requested that they be supplied with a copy of plaintiff's request for further and better particulars. This request by the defendants' solicitors is strange since the plaintiff's solicitors, way back on 28 September 2000 (that is to say, four years ago), had already served on the defendants' solicitors with the request for further and better particulars. Nevertheless the solicitors for the plaintiff by their letter of 11 January 2005 acceded to the request. On that same day itself (11 January 2005) the plaintiffs solicitors received the 'further and better particulars' from the defendants' solicitors (see the defendants solicitors' letter of 11 January 2005 — encl 88). But the contents of the 'further and better particulars', as I see it — and I am in agreement with learned counsel for the plaintiff — are wholly unsatisfactory. Indeed, the information supplied cannot be said to be further and better particulars. The contents are evasive and meaningless. The unsatisfactory nature of the information supplied only goes to show the inability on the part of the defendants to substantiate their claim of justification and fair comment.

[20] Third, the defendants had not been cooperative with their counsel and lacked interest in the proceedings. It is to be observed that (and as has been pointed out a moment ago), according to the defendants' solicitors, in their letter of 11 January 2005 (encl 85) to the plaintiff's solicitors, they mentioned that they had difficulties in getting in touch with the defendants. Now, it is pertinent to note that this is not the first time that the defendants' solicitors have had difficulties in getting in touch with the defendants. The defendants' previous solicitors too, Ms Haniff & Rajendran, have had difficulty in getting in touch with the defendants. So much so that they (Ms Haniff & Rajendran) applied (the summons in chambers dated 27 October 1998 is at encl 41) to the court to be discharged from representing the defendants. The defendants did not contest the application. They did not file any affidavit in reply; nor did they appear at the hearing of the application on 9 November 1998. Accordingly, the court granted the application to discharge (the court's order is at encl 46).

[21] Fourth, the defendants' solicitors have shown a lackadaisical attitude towards the proceedings. It is to be observed that the defendants' solicitors, when confronted with the 72 hour notice (see encl 84) issued by the plaintiff's solicitors, had requested that they be supplied with a copy of the request for further and better particulars. They did not explain why they need to be supplied

with the request. Now, why should they ask to be supplied with the request for further and better particulars when in the first place they had already been served by the plaintiff's solicitors with such a request four years ago way back in September 2000! It is either that the defendants' solicitors had carelessly misplaced the earlier request or that they couldn't be bothered to search for it in their file.

[22] Taking into account the above factors, I was satisfied that it would meet the ends of justice if the defence is struck out and judgment be given for the plaintiff with costs.

[23] (Having directed that damages be assessed before the judge, I had directed the plaintiff's solicitor to submit on the nature and procedure of the proceeding for assessment of damages; and the hearing of the submission to be held on 3 February 2005.)

Plaintiff's application allowed.

Reported by Lim Lee Na